

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 771 of 1992

WITH

CRIMINAL APPEAL No 1271 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

POPAT VAJAJI KAROVA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 771 of 1992
MS SADHANA SAGAR for Petitioner No. 1
MR DP JOSHI, APP for Respondent No. 1
 2. Criminal Appeal No. 1271 of 1993
MS SADHANA SAGAR for Petitioner No. 1
MR DP JOSHI, APP for Respondent No. 1
-

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 11/09/2001

ORAL COMMON JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

1. On a trial held by the Ld. Addl. Sessions Judge, Sabarkantha at Himatnagar, the appellant in Criminal Appeal No. 771/1992 as well as appellant in Criminal Appeal No. 1271/1993 have been convicted of the offence punishable under Section 302 read with section 34 of the Indian Penal Code vide judgment dated May 30, 1992 rendered in Sessions Case No. 95/1991. As both these appeals arise out of common judgment delivered by the Ld. Addl. Sessions Judge in Sessions Case No. 95/1991 and as common questions of facts and law arise for our determination in these appeals, we propose to dispose them of by this common judgment.

2. Deceased Ramjibhai Patel was a resident of village Dantod, Taluka Vijaynagar, District Sabarkantha. He was running a hotel near bus stand of village Chithoda. The incident in question took place on September 10, 1991 at about 9.00 p.m. The complainant i.e. Kantibhai Ramjibhai Patel who is son of the deceased, when he was in his field situated in the sim of village Masota was informed on September 11, 1991 at about 7.00 a.m. in the morning that his presence was needed at the hotel of his father. On receipt of information, the complainant had gone to the hotel of his father and found that several persons had collected near the hotel including the appellant in Criminal Appeal No. 771/1992 as well as appellant in Criminal Appeal No. 1271/1993. The appellant in Criminal Appeal No. 1271/93 had informed the complainant that some body had killed his father. The complainant had noticed that there was blood behind left ear of his father and a wound also. The complainant also found that there were scattered blood stains on the cot where the dead body of his father was lying as well as bench which was placed nearby. The complainant therefore, concluded that his father was killed by some one. He in the company of Sarpanch of the village and Gautambhai Kuberbhai Patel of village Dantod made inquiry round about the area and found that in a field wherein maize was grown there were scattered blood stains upto the house of the appellant in Criminal Appeal No. 1271/1993. The complainant, therefore, lodged complaint on September 11, 1991 against the convicted

appellants as well as others at Vijaynagar Police Station. After lodging of the complaint, necessary investigation into the same was made by Mr. H.M. Parmar, who was then Police Sub Inspector of the Police Station. The Investigating Officer recorded statements of witnesses who were found conversant with the facts of the case and discovered incriminating articles pursuant to voluntary disclosure made by the accused under a panchnama prepared in the presence of panch witnesses. The incriminating articles discovered were sent to Forensic Science Laboratory for analysis and report of the analyst was obtained. On conclusion of investigation, the Investigating Officer chargesheeted the two convicted appellants as well as four others of the offences punishable u/Ss. 302, 201, 120 (B) read with section 34 of the Indian Penal Code as well as section 135 of the Bombay Police Act in the Court of the Ld. Judicial Magistrate First Class, Khedbrahma. As the offence punishable u/S. 302 of the Indian Penal Code is exclusively triable by a Court of Sessions, the case was committed to Sessions Court at Himatnagar for trial where it was numbered as Sessions Case No. 95/1991.

3. The charge at Exh. 3 was framed by the Ld. Addl. Sessions Judge against the accused of the offences punishable u/Ss. 302, 201, 120 (B) read with section 34 of the Indian Penal Code. The charge was read over and explained to the accused, who pleaded not guilty to the same and claimed to be tried. The prosecution, therefore examined (1) Kantibhai Ramjibhai, P.W.1 Exh.11, (2) Bhikhabhai Somabhai P.W.2 Exh.13, (3) Niruben Ramjibhai P.W.3 Exh.14, (4) Gautambhai Kuberbhai Patel P.W.4 Exh.15, (5) Narendrakumar Somaji Pandey P.W.5 Exh.27, (6) Amraji Mangalaji P.W.6 Exh. 30, (7) Natvar Sankalchand P.W.7, Exh.45, (8) Thavariben Ramjibhai P.W.8 Exh.49, (9) Rupaben Mangalaji P.W.9 Exh. 50, (10) Jujjarsinh Kubersinh P.W.10 Exh.51, (11) Dr. Bharatkumar Kalidas P.W. 11 Exh. 57, (12) Dr. Narendrakumar Chunilal P.W.12 Exh.60, (13) Makansinh Balvantsinh P.W.12-A Exh.64 and (14) Hirabhai Mulajibhai Parmar P.W.13 Exh.64 to prove its case against the accused. The prosecution also produced documentary evidence such as complaint filed by Kantibhai, panchnama of place of incident, post mortem notes of the deceased, different discovery panchnamas, inquest report, certificate indicating blood groups of the convicted appellants, etc. in support of its case against the accused. After recording of evidence of prosecution witnesses was over, the Ld. Judge explained to the accused the circumstances appearing against them in the evidence of prosecution witnesses and recorded

their further statements as required by Section 313 of the Code of Criminal Procedure. In their further statements the accused claimed that the case of the prosecution against them was false, but did not examine any witness in support of their defence. The convicted appellants as well as original accused no. 4 submitted their written explanation at Exh.71 and tried to give explanation regarding find of blood on weapons, which were discovered pursuant to voluntary disclosure made by them. The claim advanced in the written statement was that they had gone in the jungle for cutting wood and at that time the appellant in Criminal Appeal No. 1271/1993 had an axe with him, whereas the appellant in Criminal Appeal No. 771/1992 had Chadar with him for the purpose of tying the cut wood and accused no.4 had a knife with him for cutting piece of branches of certain trees used for cleaning the teeth. It was stated in the explanation that at the time of cutting of pieces of branches of certain trees used for cleaning the teeth, the accused no. 4 had injured his finger and had shaken his finger because of pain, as a result of which the blood sprinkled over the axe, the Chadar as well as shirts put on by the convicted appellants, and that they had not committed the crime in question.

The Ld. Judge noticed that no direct evidence was tendered by the prosecution against the appellants and that the prosecution case was based on circumstantial evidence.

4. On appreciation of evidence adduced by the prosecution, the Ld. Judge held that it was proved that the deceased as well as appellant in Criminal Appeal No. 1271/1993 had illicit relations with witness Rupaben Mangalaji and as the deceased had informed the wife of the appellant of Criminal Appeal No. 1271/93 about the illicit relations between her husband and witness Rupaben, the appellant in Criminal Appeal No. 1271/93 was agitated. In view of this finding, the Ld. Judge held that the prosecution was successful in establishing the motive which prompted the appellant in Criminal Appeal No. 1271/1993 to commit crime in question. According to the Ld. Judge the evidence led by the prosecution relating to the discovery of incriminating articles such as axe, brass knuckle, shirts put on by the convicted appellants at the time of commission of offence was pursuant to voluntary disclosure made by the convicted appellants was reliable as well as relevant as an incriminating circumstance against the accused. The Ld. Judge further held that it was proved by the prosecution that the incriminating articles discovered

pursuant to voluntary disclosure made by the accused had blood stains having same blood group as that of the deceased which indicated that the convicted appellants were near the deceased at the time of incident and that they had opportunity of committing crime in question. The Ld. Judge held that though there was no direct evidence regarding the commission of offences by the accused, the circumstantial evidence relied on by the prosecution established that the convicted appellants had murdered the deceased. According to the Ld. Judge, the circumstances from which conclusion of guilt was to be drawn were fully established and all the facts established were consistent with the hypothesis of the guilt of the convicted appellants and totally inconsistent with their innocence. As the Ld. Judge was of the opinion that the total cumulative effect of all the circumstances proved, established the guilt of the accused, the Ld. Judge has convicted the appellants by judgment dated May 30, 1992 and acquitted rest of the accused by giving benefit of doubt. The conviction and imposition of sentence referred to earlier is subject matter of challenge in the two appeals which have been filed u/S. 374 (2) of the Code of Criminal Procedure, 1973.

5. Ms. Sadhna Sagar, the learned counsel for the convicted appellants submitted that the prosecution has failed to prove motive which prompted the appellants to commit crime in question and as one of the important ingredients which must be established in a case based on circumstantial evidence is not proved, the appeal should be accepted. According to the Ld. Counsel, the evidence regarding sniffer dog should not be believed by the Court as the dog trainer is not examined by the prosecution as one of the witnesses in the case. The Ld. counsel pleaded that the chain of evidence being not complete, leaves a reasonable ground for the conclusion consistent with the innocence of the convicted appellants and, therefore, the benefit of doubt should be given to the appellants. What was stressed was that no evidence has been adduced by the prosecution to establish that the deceased was last seen in the company of the convicted appellants and as case of the prosecution against co-accused is disbelieved by the Ld. Addl. Sessions Judge, the appeals filed by the convicted appellants should be accepted.

6. Mr. D.P. Joshi, Ld. APP contended that the motive which prompted the appellant in Criminal Appeal No. 1271/1993 to commit the crime in question is fully established by the prosecution through the evidence of

complainant Kantibhai Ramjibhai as well as that of Thavariben Ramjibhai and Rupaben Mangalaji and, therefore, it is wrong to contend that the prosecution has failed to prove motive in the present case. The Ld. counsel referred to the discovery panchnamas and contended that incriminating articles having been discovered pursuant to voluntary disclosure made by the accused, which is admissible u/S. 27 of the Indian Evidence Act, the said fact should be taken into consideration while assessing the circumstantial evidence against the accused. Further according to the Ld. Counsel for the State, the shirts which were put on by the convicted appellants as well as the axe discovered at the instance of the appellant in Criminal Appeal No. 1271/1993 had the same blood group as that of the deceased which established that the convicted appellants were in proximity of deceased when the deceased was fatally wounded and had opportunity of committing the crime in question and, therefore, their conviction should be upheld by the Court. The learned counsel emphasized that false written explanation is offered by the appellants regarding find of blood on clothes put on by them and the weapon and the false explanation or a false defence pleaded by the convicted appellants should be called into aid to lend assurance to the Court that the convicted appellants were the persons who had committed the crime in question. According to the Ld. Counsel for the State, the prosecution has been able to establish a chain of evidence so far complete as not to leave any reasonable ground or a conclusion consistent with the innocence of the accused and as the prosecution has established that within all human probability the act must have been done by the convicted appellants, their appeals should be dismissed.

7. We have taken into consideration the submissions advanced at the bar and reappreciated as well as reviewed the whole evidence on record. It is relevant to notice that the prosecution has not claimed that the incident in question has been witnessed by any one and no direct evidence regarding the incident is tendered before the Court. Admittedly, the whole case against the convicted appellants rests on circumstantial evidence. The law relating to circumstantial evidence is well settled. In cases where evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should, in the first instance, be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. The circumstances should be of a conclusive nature and tendency and they should be such as to exclude every

hypothesis, but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused. In deciding the sufficiency of the circumstantial evidence for the purpose of conviction, Court has to consider the total cumulative effect of all the proved facts, each one of which reinforces the conclusion of guilt and if the combined effect of all these facts taken together is conclusive in establishing the guilt of the accused, the conviction would be justified even though it may be that one or more of these facts by itself or themselves is or are, not decisive. Where a case rests squarely on circumstantial evidence, various sets of circumstantial evidence should be taken into consideration and their total effect should be such that they must lead unerringly to the guilt of the accused. Each fact must be proved individually and only thereafter the sum total of the proved facts has to be taken into consideration. But this does not mean that before the prosecution can succeed in a case resting upon the circumstantial evidence alone, it must prove each and every hypothesis suggested by the accused, howsoever, extravagant and fanciful it might be. In *Sharad v/s. State of Maharashtra*, AIR 1984 S.C. 1622 after referring to earlier case law, the Supreme Court has summarized the conditions to be fulfilled in a case based on circumstantial evidence as under :-

- (1) The circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned "must" or "should" and not "may" be established.
- (2) The facts so established should be consistent only with the hypothesis of the guilt of accused, that is to say, that they should not be explainable on any other hypothesis except that the accused is guilty.
- (3) The circumstances should be of a conclusive nature and tendency.
- (4) They should exclude every possible hypothesis except the one to be proved.
- (5) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused, and
- (6) where the various links in a chain are themselves

complete, then a false plea or false defence may be called into aid only to lend assurance to the Court.

If the aforesaid various conditions are fulfilled, only then the Court can use a false explanation or false defence as an additional link and not otherwise. As observed earlier, if the circumstances proved are consistent with the innocence of the accused, then the accused is entitled to the benefit of doubt. However, in applying this principle, distinction must be made between facts, called primary or basic on the one hand and inference of facts to be drawn from them on other. With regard to the proof of basic or primary facts the Court has to judge the evidence in the ordinary way. It has to consider the evidence and decide whether that evidence proves a particular fact or not and if that fact is proved, the question arises whether that fact leads to the inference of guilt of the accused person or not, and in dealing with this aspect of problem, the doctrine of benefit of doubt applies. Although there should be no missing link in the case, it is not essential that every one of the links must appear on the surface of the evidence adduced and some of these links may have to be inferred from proved facts. In drawing these inferences or presumption, the Court must have regard to the common course of natural events, to human conduct and their relations to the facts of the particular case.

10. In the light of the above referred to principles, we will now consider the question whether the case against the convicted appellants is proved or not. The fact that deceased Ramjibhai Patel died a homicidal death is not in dispute and is proved beyond reasonable doubt by the evidence of Dr. Narendrakumar Somaji Pandey P.W.5 Exh.27. The doctor has stated in his evidence that on September 11, 1991 he was Medical Officer at Community Health Centre, Vijaynagar and had performed autopsy on the dead body of Ramjibhai Patel. According to the Medical Officer, he had noticed seven external injuries out of which injuries nos. 3, 4 and 5 were caused by sharp cutting instrument, whereas other injuries were caused by hard and blunt substance. What was noticed by the Medical Officer was that there was vertical CLW on the left mastoid and temporal bone 9 cm x 3 cm bone deep and that there was fracture of temporal bone. The doctor has stated that he had also noticed internal injuries which were corresponding to the external injuries. According to the doctor, the cause of death of the deceased was haemorrhagic shock which was result of injury to the vital organ, namely, brain. The

substantive evidence of the Medical Officer stands amply corroborated by the contents of the post mortem notes prepared by him. Further the injuries which were sustained by the deceased are also mentioned in detail in the inquest which was held on the dead body of Ramjibhai Patel. Thus, the fact that the deceased died a homicidal death is proved by the prosecution beyond reasonable doubt.

11. The first circumstance which is sought to be proved by the prosecution against the convicted appellants is that the deceased as well as appellant in Criminal Appeal No. 1271/1993 had illicit relations with witness Rupaben Mangalaji and as the deceased had informed wife of the appellant in Criminal Appeal No. 1271/1993 about illicit relations between him and witness Rupaben, the said appellant was agitated and this furnished the motive for commission of crime. In this regard we notice that complainant Kantibhai Ramjibhai P.W. 1 Exh.11 in his examination-in-chief has stated that Rupaben Mangalaji was fetching water for hotel since five years and that his father was paying Rs.75/- per month as salary to her. According to this witness, his father was coming to his house situated at village Dantoda on alternate day and was dining and sleeping at the house of witness Rupaben. The witness has further informed the Court that the relations between his deceased father and Rupaben were cordial and the relations between the appellant in Criminal Appeal No. 1271/1993 and witness Rupaben were also cordial. In his cross-examination the witness stated that on the day of Holy, Manguben who is wife of the appellant in Criminal Appeal No. 1271/1993 had picked up a quarrel with Rupiben (Rupaben) as Manguben was informed by his deceased father that the appellant no. 1 and witness Rupaben had illicit relations. The witness also stated that he had seen the appellant in Criminal Appeal No. 1271/1993 with Rupiben. The witness admitted that he had not made a mention about relations between his father and Rupiben or relations between the appellant in Criminal Appeal No. 1271/1993 with Rupiben in his complaint.

12. Thavariben Ramjibhai, P.W. 8, who is examined at Exh.49 has stated before the Court that the hotel was being run by her deceased husband and that Rupiben was doing the work of fetching water for the hotel. This witness has further informed the Court that 15 days prior to the date of incident her husband had informed her that he had illicit relations with Rupiben and that he was visiting Rupiben on alternate day and was giving money to her. According to this witness, her husband had also

informed her that the appellant in Criminal Appeal No. 1271/1993 had also illicit relations with Rupiben and that the appellant had threatened to kill her husband. In her cross-examination the witness denied the suggestion that her husband was leading an adulterous life and though he was killed by some unknown person, she was falsely mentioning the name of the appellant in Criminal Appeal No. 1271/1993 as culprit of the crime.

13. Witness Rupaben Mangalaji P.W.9 Exh.50 did not support the prosecution at all, but on permission being granted she was treated as a hostile witness and confronted with her previous police statement, wherein she had stated that she had illicit relations with the deceased as well as appellant in Criminal Appeal No. 1271/1993. Though the contradictions cannot be relied upon, evidence of above referred to witnesses establishes that the deceased as well as appellant in Criminal Appeal No. 1271/1993 had illicit relations with witness Rupaben. It is also further established that the deceased had informed wife of the appellant in Criminal Appeal No. 1271/1993 about illicit relations between her husband and witness Rupaben Mangalaji. Further the prosecution evidence proves that on learning about illicit relations between her husband and witness Rupaben, the wife of the appellant in Criminal Appeal No. 1271/1993 had picked up a quarrel with Rupaben. All these facts proved make it evident that the appellant in Criminal Appeal No. 1271/1993 was highly agitated because not only the deceased was his rival so far as his relations with Rupaben Mangalaji were concerned, but also because due to information conveyed by the deceased to his wife, a quarrel had taken place between his wife and witness Rupaben. Thus, the motive which prompted the appellant in Criminal Appeal No. 1271/1993 to commit the crime in question is fully established by the prosecution.

14. However, at this stage we notice that no motive at all is attributed to the appellant in Criminal Appeal No 771/1992 which prompted him either to commit murder of the deceased or help the appellant in Criminal Appeal No. 1271/1993 in the commission of crime.

15. The second circumstance which is sought to be proved by the prosecution against the convicted appellants is that they had made voluntary disclosure before independent witnesses, pursuant to which weapons used in commission of offence were discovered. The evidence of witness Amraji Mangalaji P.W.6 Exh.30 establishes that on September 12, 1991 he was requested

to act as a panch and that pursuant to voluntary disclosure made by the appellant in Criminal Appeal No. 771/1992 the Chadar which was used for removing the deceased from the field to his hotel was discovered from a place situated near tree of stoned fruit, whereas his Chappal put on by him and brass knuckle allegedly used by him were discovered from the field where maize was grown. This witness has further stated that thereafter he in the company of another panch witness was taken by the appellant in Criminal Appeal No. 1271/1993 to his house and the said appellant had taken out the axe from a place where wood was stacked. According to the panch witness there were blood stains on the blade of the axe as well as handle of wood which were marked with the help of pencil. What is claimed by this witness is that thereafter the appellant in Criminal Appeal No. 1271/1993 had taken out shirt which was put on by him at the time of incident from a trunk lying in his house and that the said shirt was found to be blood stained. Though this witness was cross-examined by the defence, nothing could be brought on record to doubt his version which was given in his examination-in-chief. This witness is amply corroborated by contemporary documents, namely different panchnamas. Further the evidence of panch witness gets full corroboration from the evidence of Investigating Officer i.e. Hirabhai Mulajibhai Parmar, who is examined as P.W. 13 at Exh.64. The evidence of Investigating Officer regarding discovery of incriminating articles is not seriously challenged by the defence. On overall view of the evidence on record, we are satisfied that it is established by the prosecution that the incriminating articles such as blood stained axe, brass knuckle, blood stained shirts of the convicted appellants, etc. were discovered pursuant to voluntary disclosure made by them and that this is an incriminating circumstance which is proved by the prosecution against the convicted appellants beyond reasonable doubt.

16. The report of the Serologist indicates that the blood of the deceased belonged to "A" group and the blood found on (1) blade of the axe, (2) handle of the axe and (3) shirts put on by the convicted appellants was also of the same group. The evidence of doctor Bharatbhai Kalidas P.W. 11 Exh. 57 would indicate that the appellant in Criminal Appeal No. 771/1992 was brought to him for the purpose of ascertaining his blood group and that he had taken blood sample of the said appellant for the purpose of ascertaining his blood group. The doctor has stated that on analysis it was found that the blood group of the appellant in Criminal Appeal No. 771/1992 was "AB Positive". The doctor has produced certificate

issued by him at Exh.59. Further the evidence of Dr. Narendra Chunilal P.W.12 Exh.60 establishes that on September 18, 1991 the appellant in Criminal Appeal No. 1271/1993 was brought before him for the purpose of ascertaining his blood group and that he had taken sample of his blood for the purpose of ascertaining his blood group. The doctor has stated before the Court that on analysis it was found that the blood group of the appellant in Criminal Appeal No. 1271/1993 was "O" Positive. Though the appellants were explained about incriminating circumstance, namely, find of "A" group of blood on the incriminating articles discovered pursuant to voluntary disclosure made by them, they did not offer any explanation. Discovery of blood of same group on the weapons used in the offence by the appellant in Criminal Appeal No. 1271/1993 as well as on his shirt indicates that the said appellant was in close proximity of the deceased when the deceased was fatally wounded and that the said appellant had all opportunity of committing crime in question. However, we notice that though the shirt put on by the appellant in Criminal Appeal No. 771/1992 had the same blood group as that of the deceased, the weapon which was allegedly used by him i.e. brass knuckle had no blood stains at all and, therefore, it is not proved by the prosecution that the weapon of offence allegedly used by the appellant in Criminal Appeal No. 771/1992 had the same blood group as that of the deceased.

17. The above discussion of the evidence on record would indicate that three circumstances are proved beyond reasonable doubt by the prosecution against the appellant in Criminal Appeal No. 1271/1993 i.e. (1) that he had strong motive to commit murder of the deceased, (2) because of the voluntary disclosure made by him, blood stained shirt and axe used in the commission of offence were discovered in the presence of independent witnesses and (3) that the weapon of offence used by him as well as shirt put on by him had the same blood group as that of the deceased, which indicated that he was in close proximity to the deceased when the deceased was fatally wounded. The circumstances proved are of a conclusive nature and tendency and they are such as to exclude every hypothesis, but the one proposed to be proved against the said appellant. The chain of circumstances is complete and does not afford any reasonable ground for a conclusion consistent with the innocence of the appellant. On consideration of total cumulative effect of all the proved facts, we are satisfied that in all human probability the act of causing death of the deceased must have been done by the appellant in Criminal

Appeal No. 1271/1993. We notice that the Supreme Court in (1) Vasa Chandrasekhar Rao v/s. Ponna Satyanarayana, (2000) 6 S.C.C. 286 and (2) Geetha v/s. State of Karnataka (2000) 10 S.C.C. 72, while explaining law regarding circumstantial evidence, has ruled that where circumstances proved are put to the accused through his examination u/S. 313 of the Code of Criminal Procedure and the accused merely denies the same, then such denial would be an additional link in the chain of circumstances to bring home the charge against accused. Here in this case the incriminating circumstances proved were put to the appellant in Criminal Appeal No. 1271/1993 and in his further statement recorded u/S. 313 he has merely denied the same. Therefore, such denial on his part will have to be treated as an additional link in the chain of circumstances to bring home the charge against the appellant.

As noticed earlier the convicted appellants and original accused no. 4 had filed written statement before the Sessions Court at Exh.71. In their written statement it was claimed that the appellant in Criminal Appeal No. 1271/1993 with his axe, whereas the original accused no.4 with a knife had gone to jungle for cutting the wood and the appellant in Criminal Appeal No. 771/1992 was carrying a Chadar for the purpose of tying cut wood. In the written statement it is stated that while cutting piece of branches of certain trees used for cleaning the teeth, the original accused no. 4 had injured his finger and had shaken the same because of pain, as a result of which blood had sprinkled over the blade of the axe as well as handle of the axe and shirts of the convicted appellants. This explanation to say the least is totally false. We may state that nothing has been produced on the record of the case by the convicted appellants which would indicate that the accused no. 4 had sustained a serious injury which had resulted into profuse bleeding to such an extent that all these articles had got blood stains because he had shaken his finger. Further no evidence could be produced by the convicted appellants in support of their case that any injury was sustained by original accused no.4. There is no manner of doubt that the convicted appellants have taken up a defence which is found to be false and, therefore, this also will have to be treated as an additional link against the convicted appellants in order to lend assurance to the conscious of the Court. In fact the appellant in Criminal Appeal No. 1271/1993 has virtually admitted that he had axe with him by submitting the written statement. As observed earlier, the prosecution has established beyond reasonable doubt that

this very blood stained axe was discovered in the presence of panch witnesses pursuant to voluntary disclosure made by the appellant and that the Medical Officer has in terms stated that the fatal injury sustained by the deceased was possible by the axe, which was produced as one of the Muddamal articles before the Court. On overall view of the matter, we are satisfied that the circumstances proved by the prosecution establish beyond reasonable doubt that the appellant in Criminal Appeal No. 1271/1993 had caused death of deceased Ramjibhai Patel and is rightly convicted by the Ld. Addl. Sessions Judge u/S. 302 of the Indian Penal Code. Having regard to the totality of the facts and circumstances of the case, we do not find any substance in the appeal filed by him and his appeal is liable to be dismissed.

18. So far as Criminal Appeal No. 771/1992, which is filed by the original accused no.6. is concerned, we find that the prosecution has failed to prove any motive against him which might have prompted him to commit the crime in question. Further according to the prosecution he had used brass knuckle with teeth for the purpose of causing injury to the deceased. The evidence of Dr. Narendrakumar Somaji Pandey shows that injuries nos. 6 and 7 which were noticed by him on the dead body of the deceased while performing autopsy, were possible by the brass knuckle. However, the evidence of the doctor makes it more than clear that all the injuries on deceased were caused to him after he was made to lie down on the ground and that it was not possible to cause injuries at a time, but that all the injuries were caused one after another. If this part of the evidence of the doctor is taken into consideration, it becomes evident that more serious injuries would have been caused to the deceased by use of brass knuckle which had teeth and trivial injuries nos. 6 and 7 as noticed by the doctor would not have been caused by the use of brass knuckle. In fact, if the brass knuckle with teeth would have been used for causing injury to the deceased, blood stains would have been found on the knuckle, but it is not the case of the prosecution that the knuckle was blood stained when it was discovered in the presence of panch witnesses pursuant to voluntary disclosure made by the appellant in Criminal Appeal No. 771/1992. It is well settled that where a case is founded on circumstantial evidence, before absence of explanation or a false explanation of the accused for the circumstances and facts proved against him is used as an additional link against the accused, the Court should satisfy that (1) various links in the chain of evidence led by the prosecution have been

satisfactorily proved, (2) the circumstances point to the guilt of accused and (3) the circumstances are in proximity to the time and situation. In our view, except proving the fact that the shirt put on by the appellant in Criminal Appeal No. 771/1992 had the same blood group as that of the deceased, no other circumstance is proved against the appellant and, therefore, it would be hazardous to convict the said appellant of the offence punishable u/S. 302 of the Indian Penal Code. In his case, the chain of circumstances sought to be proved being not complete, he is entitled to a reasonable benefit of doubt. Thus, the Criminal Appeal No. 771/1992 filed by the original accused no. 6 deserves to be allowed.

19. For the foregoing reasons, Criminal Appeal No. 771/1992 is allowed. The conviction of the appellant of the said appeal u/S. 302 read with section 34 of the Indian Penal Code is hereby set aside and quashed. The authorities are directed to set him at liberty forthwith unless his presence is needed with reference to any other case. So far as Criminal Appeal No. 1271/1993 filed by the original accused no. 1 is concerned, the same is hereby dismissed and his conviction as well as punishment imposed is hereby confirmed.

The Muddamal is to be disposed of in terms of the direction given by the learned Addl. Sessions Judge in the impugned judgment.

[J.M. PANCHAL, J.]

[AKSHAY H. MEHTA, J.]

* Pansala.